United Nations A/C.3/66/L.52

General Assembly

Distr.: Limited
27 October 2011

Original: English

Sixty-sixth session
Third Committee
Agenda item 69 (b)
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Argentina, Brazil, Chile, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico and Nicaragua: draft resolution

Protection of migrants

The General Assembly,

Recalling all its previous resolutions on the protection of migrants, the most recent of which is resolution 65/212 of 21 December 2010, and recalling also Human Rights Council resolution 18/21 of 30 September 2011,[1]

Reaffirming the Universal Declaration of Human Rights,[2] which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Reaffirming also that everyone has the right to freedom of movement and residence within the borders of each State and the right to leave any country, including his or her own, and to return to his or her country,

Recalling the International Covenant on Civil and Political Rights[3] and the International Covenant on Economic, Social and Cultural Rights,[3] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[4] the Convention on the Elimination of All Forms of Discrimination against Women,[5] the Convention on the Rights of the Child,[6] the International Convention on the

[1] See *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 53A* (A/66/53/Add.1), chap. II.
[2] Resolution 217 A (III).
[3] See resolution 2200 A (XXI), annex.
[4] United Nations, *Treaty Series*, vol. 1465, No. 24841.
[5] Ibid., vol. 1249, No. 20378.
[6] Ibid., vol. 1577, No. 27531.

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Elimination of All Forms of Racial Discrimination,[7] the Convention on the Rights of Persons with Disabilities,[8] the Vienna Convention on Consular Relations[9] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[10]

Recalling also the provisions concerning migrants contained in the outcome documents of all major United Nations conferences and summits, including the Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development,[11] which recognizes that migrant workers are among the most affected and vulnerable in the context of financial and economic crises,

Recalling further Commission on Population and Development resolutions 2006/2 of 10 May 2006[12] and 2009/1 of 3 April 2009,[13]

Taking note with appreciation of the United Nations Development Programme *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development*,[14]

Taking note of advisory opinion OC-16/99 of 1 October 1999 on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law and advisory opinion OC-18/03 of 17 September 2003 on the Juridical Condition and Rights of Undocumented Migrants, issued by the Inter-American Court of Human Rights,

Taking note also of the Judgment of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals*[15] and the Judgment of the Court of 19 January 2009 regarding the request for interpretation of the *Avena* Judgment,[16] and recalling the obligations of States reaffirmed in both decisions,

Underlining the importance of the Human Rights Council in promoting respect for the protection of the human rights and fundamental freedoms of all, including migrants,

Recognizing the increasing participation of women in international migration movements,

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[7] Ibid., vol. 660, No. 9464.

[8] Resolution 61/106, annex I.

[9] United Nations, *Treaty Series*, vol. 596, No. 8638.

[10] Ibid., vol. 2220, No. 39481.

[11] Resolution 63/303, annex.

[12] See *Official Records of the Economic and Social Council, 2006, Supplement No. 5* (E/2006/25), chap. I, sect. B.

[13] Ibid., *2009, Supplement No. 5* (E/2009/25), chap. I, sect. B.

[14] United Nations publication, Sales No. E.09.III.B.1.

[15] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4* (A/59/4), chap. V, sect. A.23; see also *Avena and Other Mexican Nationals* (*Mexico* v. *United States of America*), *Judgment, I.C.J. Reports 2004*, p. 12.

[16] See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 4* (A/64/4), chap. V, sect. B.12. See also *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) (*Mexico* v. *United States of America*), *Judgment* (available from www.icj cij.org/docket/files/139/14939.pdf).

Recalling the High-level Dialogue on International Migration and Development, held in New York on 14 and 15 September 2006 for the purpose of discussing the multidimensional aspects of international migration and development, which, inter alia, recognized the relationship between international migration, development and human rights,

Noting the fifth meeting of the Global Forum on Migration and Development, to be held in Geneva on 1 and 2 December 2011, which will draw together the results and conclusions of fourteen thematic meetings that have taken place worldwide from January to October 2011 on the central theme "Taking action on migration and development — coherence, capacity and cooperation" as a contribution to promoting international cooperation among States and between States and other actors in order to strengthen the capacity of States to address migration and development opportunities and challenges more effectively, and taking note with appreciation of the generous offer of Mauritius to assume the presidency of the Global Forum for 2012,

Recognizing the cultural and economic contributions made by migrants to receiving societies and their communities of origin, as well as the need to identify appropriate means of maximizing development benefits and responding to the challenges which migration poses to countries of origin, transit and destination, especially in the light of the impact of the financial and economic crisis, and committing to ensuring dignified, humane treatment with applicable protections and to strengthening mechanisms for international cooperation,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and dialogue in this regard, as appropriate, and the need to protect the human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

Bearing in mind the obligations of States under international law, as applicable, to exercise due diligence to prevent crimes against migrants and to investigate and punish perpetrators, and that not doing so violates and impairs or nullifies the enjoyment of the human rights and fundamental freedoms of victims,

Affirming that crimes against migrants, including trafficking in persons, continue to pose a serious challenge and require a concerted international assessment and response and genuine multilateral cooperation among countries of origin, transit and destination for their eradication,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as full respect for the human rights and fundamental freedoms of migrants,

Stressing the importance of regulations and laws regarding irregular migration, at all levels of Government, being in accordance with the obligations of States under international law, including international human rights law,

Stressing also the obligation of States to protect the human rights of migrants regardless of their migration status, and expressing its concern at measures which, including in the context of policies aimed at reducing irregular migration, treat

irregular migration as a criminal rather than an administrative offence where the effect of doing so is to deny migrants full enjoyment of their human rights and fundamental freedoms,

Aware that, as criminals take advantage of migratory flows and attempt to circumvent restrictive immigration policies, migrants become more vulnerable to, inter alia, kidnapping, extortion, forced labour, sexual exploitation, physical assault, debt servitude and abandonment,

Recognizing the contributions of young migrants to countries of origin and destination, and in that regard encouraging States to consider the specific circumstances and needs of young migrants,

Concerned about the large and growing number of migrants, especially women and children, who place themselves in a vulnerable situation by attempting to cross international borders without the required travel documents, and recognizing the obligation of States to respect the human rights of those migrants,

Stressing that penalties and the treatment given to irregular migrants should be commensurate with their infraction,

Recognizing the importance of having a comprehensive and balanced approach to international migration, and bearing in mind that migration enriches the economic, political, social and cultural fabric of States and the historical and cultural ties that exist among some regions,

Recognizing also the obligations of countries of origin, transit and destination under international human rights law,

Underlining the importance for States, in cooperation with non-governmental organizations and other relevant stakeholders, to undertake information campaigns aimed at clarifying opportunities, limitations, risks and rights in the event of migration, so as to enable everyone to make informed decisions and to prevent anyone from utilizing dangerous means to cross international borders,

1. *Calls upon* States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability;

2. *Expresses its concern* about the impact of financial and economic crises on international migration and migrants, and in that regard urges Governments to combat unfair and discriminatory treatment of migrants, particularly migrant workers and their families;

3. *Reaffirms* the rights set forth in the Universal Declaration of Human Rights[2] and the obligations of States under the International Covenants on Human Rights,[3] and in this regard:

(a) Strongly condemns the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, including on the basis of religion or belief, and

urges States to apply and, where needed, reinforce the existing laws when xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts;

(b) Expresses concern about legislation adopted by some States that results in measures and practices that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

(c) Expresses its concern about recent legislative measures adopted by different levels of government, affecting the human rights of migrants and members of their families;

(d) Calls upon States to ensure that their laws and policies, including in the areas of counter-terrorism and combating transnational organized crime, such as trafficking in persons and smuggling of migrants, fully respect the human rights of migrants;

(e) Calls upon States that have not done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[10] as a matter of priority, and requests the Secretary-General to continue his efforts to promote and raise awareness of the Convention;

(f) Takes note of the report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its thirteenth and fourteenth sessions;[17]

4. *Also reaffirms* the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, and therefore:

(a) Calls upon all States to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention;

(b) Urges all States to adopt effective measures to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups;

(c) Notes with appreciation the measures adopted by some States to reduce detention periods in cases of undocumented migration, in the application of domestic regulations and laws regarding irregular migration;

(d) Also notes with appreciation the successful implementation by some States of alternative measures to detention in cases of undocumented migration as a practice that deserves consideration by all States;

(e) Requests States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at

[17] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 48* (A/66/48).

borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants, inter alia, arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

(f) Underlines the right of migrants to return to their country of citizenship, and recalls that States must ensure that their returning nationals are duly received;

(g) Reaffirms emphatically the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations,[9] in particular with regard to the right of all foreign nationals, regardless of their immigration status, to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention;

(h) Requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association;

(i) Encourages all States to remove unlawful obstacles, where they exist, that may prevent the safe, transparent, unrestricted and expeditious transfer of remittances, earnings, assets and pensions of migrants to their country of origin or to any other countries, in conformity with applicable legislation and agreements, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

(j) Recalls that the Universal Declaration of Human Rights recognizes that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him or her;

5. *Emphasizes* the importance of protecting persons in vulnerable situations, and in this regard:

(a) Expresses its concern about the increase in the activities of transnational and national organized crime entities and others who profit from crimes against migrants, especially women and children, without regard for dangerous and inhumane conditions and in flagrant violation of domestic laws and international law and contrary to international standards;

(b) Also expresses its concern about the high level of impunity enjoyed by traffickers and their accomplices as well as other members of organized crime entities and, in this context, the denial of rights and justice to migrants who have suffered from abuse;

(c) Welcomes immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious, tolerant and respectful environment, and encourages States to consider the possibility of adopting these types of programmes;

(d) Encourages all States to develop international migration policies and programmes that include a gender perspective, in order to adopt the measures necessary to better protect women and girls against dangers and abuse during migration;

(e) Calls upon States to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, ensuring that the best interests of the child are a primary consideration in their policies of integration, return and family reunification;

(f) Encourages all States to prevent and eliminate discriminatory policies and legislation, at all levels of government, that deny migrant children access to education;

(g) Encourages States, while upholding the best interest of the child, to foster the successful integration of migrant children into the education system and the removal of barriers to their education in host and receiving countries;

(h) Urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international obligations and commitments, the principle of the best interests of the child and family reunification;

(i) Urges States parties to the United Nations Convention against Transnational Organized Crime[18] and supplementing protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air[19] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[20] to implement them fully, and calls upon States that have not done so to consider ratifying or acceding to them as a matter of priority;

6. *Takes note with appreciation* of the study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration,[21] and invites States to take into account the conclusions and recommendations of the study when designing and implementing their migration policies;

7. *Encourages* States to protect victims of national and transnational organized crime, including kidnapping, trafficking and, in some instances, smuggling, through, where applicable, the implementation of programmes and policies that guarantee protection and access to medical, psychosocial and legal assistance;

8. *Encourages* Member States that have not already done so to enact domestic legislation and to take further effective measures to combat international trafficking in persons and smuggling of migrants, recognizing that these crimes may endanger the lives of migrants or subject them to harm, servitude or exploitation, which may also include debt bondage, slavery, sexual exploitation or forced labour,

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[18] United Nations, *Treaty Series*, vol. 2225, No. 39574.

[19] Ibid., vol. 2241, No. 39574.

[20] Ibid., vol. 2237, No. 39574.

[21] A/HRC/15/29.

and also encourages Member States to strengthen international cooperation to combat such trafficking and smuggling;

9. *Stresses* the importance of international, regional and bilateral cooperation in the protection of the human rights of migrants, and therefore:

(a) Requests all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give due consideration to international, regional and bilateral cooperation in this field, including by undertaking dialogues on migration that include countries of origin, transit and destination, as well as civil society, including migrants, with a view to addressing, in a comprehensive manner, inter alia, its causes and consequences and the challenge of undocumented or irregular migration, granting priority to the protection of the human rights of migrants;

(b) Encourages States to take the measures necessary to achieve policy coherence on migration at the national, regional and international levels, including by ensuring coordinated child protection policies and systems across borders that are in full compliance with international human rights law;

(c) Also encourages States to further strengthen their cooperation in protecting witnesses in cases of smuggling of migrants and trafficking in persons;

(d) Calls upon the United Nations system and other relevant international organizations and multilateral institutions to enhance their cooperation in the development of methodologies for the collection and processing of statistical data on international migration and the situation of migrants in countries of origin, transit and destination and to assist Member States in their capacity-building efforts in this regard;

(e) Requests Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights and the Special Rapporteur of the Human Rights Council on the human rights of migrants, to ensure that the perspective of the human rights of migrants is included among the priority issues in the ongoing discussions on international migration and development within the United Nations system, and in this regard underlines the importance of adequately taking into account the human rights perspective as one of the priorities of the informal thematic debate on international migration and development, to be held in 2011, as well as in the High-level Dialogue on International Migration and Development, which will take place during the sixty-eighth session of the General Assembly, in 2013, as decided by the Assembly in its resolution 63/225 of 19 December 2008;

(f) Encourages States, relevant international organizations and civil society, including non-governmental organizations, to continue and to enhance their dialogue with a view to strengthening public policies aimed at promoting and respecting human rights, including those of migrants;

(g) Invites the Chair of the Committee to address the General Assembly at its sixty-seventh session under the item entitled "Promotion and protection of human rights", within existing resources;

(h) Invites the Special Rapporteur to submit his report to the General Assembly at its sixty-seventh session under the item entitled "Promotion and protection of human rights";

10. *Takes note* of the report of the Secretary-General submitted to the General Assembly at its sixty-sixth session on the implementation of resolution 65/212 and on how the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has influenced policy and practice, where applicable, to strengthen the protection of migrants;[22]

11. *Requests* the Secretary-General to continue to pursue his efforts to gather information on the subject of the above-mentioned report, while encouraging Member States to submit information with regard to the application of the Convention and recognizing States that have provided the requested information.

[22] A/66/253.